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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,968	05/16/2001	Andreas Kraetzschmar	521.1001	3586
23280	7590	12/19/2003	EXAMINER	
DAVIDSON, DAVIDSON & KAPPEL, LLC 485 SEVENTH AVENUE, 14TH FLOOR NEW YORK, NY 10018			DEMAKIS, JAMES A	
			ART UNIT	PAPER NUMBER
			2836	

DATE MAILED: 12/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/831,968	KRAETZSCHMAR ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	James A Demakis	2836

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on Amendment of 10/31/2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 7-12 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 7 and 10-12 is/are rejected.

7) Claim(s) 8 and 9 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 16 May 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .                    6) Other:

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7,10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over APA Nikolaeva et al (SUPN 1094088) and in view of APA Nikolaeva et al (SUPN 1076981).

Regarding Claims 7,10-11:

Nikolaeva et al '088 discloses a current limiting device with all the elements that are claimed except that all compression spaces or cavities 7 are not interconnected by openings or channels 4.

Nikolaeva et al '981 discloses a current limiting device with all cavities 6 interconnected via channels, displaced angularly relative to one another, in the compression plates 4,5.

It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the '088 device with the teachings of the '981 device to improve the limiting characteristics.

Please note the Examiner defines the term 'substantially' as used with the phrase: 'in a position deviating from a horizontal longitudinal axis' to be more than 1 degree. The '088 reference includes inclinations of up to and including 50 degrees from horizontal.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by APA Hammaond et al (DEPN 2652506).

Regarding Claim 12:

Hammaond et al disclose a current limiting device which uses liquid metals of the gallium alloys, in particular those of gallium-indium-tin alloys (GaInSn).

***Allowable Subject Matter***

5. Claims 8-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments filed 10/31/2003 have been fully considered but they are not persuasive. See below.

7. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching,

suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Nikolaeva et al '981 clearly shows "hollow spaces" in Figure 1, and Nikolaeva et al '088 also shows in Figures 1 and 2 and discloses additional empty volume in Col.1, lines 40-50. Additionally, it is well known in the art for these devices to function as designed, they must have extra volume available for volumetric expansion of the heated liquid. Also, the "hollow space" that the Applicant has specified permits the use in positions "substantially" deviating from horizontal is clearly disclosed in Nikolaeva et al '088 as part of Figures 1 and 2 and allows performance of the device at inclines from horizontal to 50 degrees, see Col. 3, lines 1-15. The Examiner, as stated in the Office Action of 9/10/2003, defines "substantially" as 1 degree or more.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A Demakis whose telephone number is 703.305.7938. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus can be reached on 703.308.3119. The fax phone number for the organization where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0956.

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James A. Demakis  
Monday, December 15, 2003



BRIAN SIRCUS  
SUPERVISORY PATENT EXAMINER  
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